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MARC SPITZER, Chairman
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IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271 OF THE TELECOMMUNICATIONS ACT OF 1996	Docket No. T-00000A-97-0238 AT&T'S COMMENTS ON STAFF'S DRAFT ORDER ON QWEST'S OSS

AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively, "AT&T") hereby file the following comments on Staff's draft Order on Qwest Corporation's ("Qwest") compliance with the Federal Communications Commission's ("FCC") requirements pertaining to operations support systems ("OSS") and Section 271 of the Telecommunications Act of 1996 ("Act").

I. INTRODUCTION

On August 15, 2003, AT&T received a draft Order that addresses Qwest's OSS and whether they satisfy the FCC's requirements for a finding of compliance with Section 271 of the Act. It is AT&T's understanding that Staff has updated the draft Order filed by Staff on May 29, 2002. Staff initially provided no guidance regarding what the nature of the changes were and where the changes had been made; however, in a subsequent discussion with Staff the changes were identified.

AT&T must raise two issues regarding Qwest's compliance with Section 271 that have come to the attention of AT&T since the Staff's initial draft Order was released in May 2002. These issues are critical to Qwest's compliance with Section 271. A finding

that Qwest has complied with Section 271 may foreclose bringing these issues up after the Commission's open meeting. Although it appears that language in paragraphs 72 and 152 in the discussion and paragraphs 3 and 4 of the conclusions of law are intended to make the order subject to the resolution of one of the issues, the Ordering paragraphs do not make the Commission's order subject to either of the issues AT&T raises herein.

II. ARGUMENTS

A. Qwest Wholesale Rate Changes

Count III of the Complaint and Order to Show Cause released December 12, 2002, alleges that "Qwest's wholesale rate change process is unreasonable when compared with its retail rate change process." Decision No. 65450, ¶ 35.[1] This "creates an unlevel playing field and results in discriminatory treatment by Qwest relative to how it treats its retail customers." *Id.*, ¶ 36.

> Given the importance of this issue, Qwest should be required to make changes to its wholesale billing rate change systems and processes to ensure comparability with its retail billing rate systems and processes. Staff believes that Qwest wholesale systems and processes should be designed to enable the implementation of wholesale rate changes within 30 business days. *Id.*, at ¶ 38.

Staff's witness testified that Qwest has already acknowledged that their current wholesale rate implementation process is inadequate." Staff Ex. 1 at 19. Staff recommended that "Qwest be ordered to implement billing and systems process changes that will allow it to implement wholesale rate changes within 30 days." *Id.*, at 20.[2] Staff also recommended that Qwest have 4 months from the date of a decision in the Show Cause case to make the necessary process changes. *Id.*

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[1] The following text is based on AT&T's Brief in the Show Cause case and all citations are to the record in the Show Cause case.

[2] On cross-examination Staff's witness made it clear that wholesale rate changes should be made in 30 *calendar* days. TR 13.

Qwest's witness discussed a number of product enhancements that Qwest has made to speed the implementation process for future cost dockets. Qwest Ex. 12-14. However, during cross-examination, Qwest's witness testified that after implementation of these enhancements, Qwest can implement wholesale rate changes in 90 calendar days, although "Qwest is continuing to try and shave time off that." TR 90-92. After all Qwest's enhancements, Qwest can implement a retail change in one billing cycle, approximately 30 calendar days, versus 90 calendar days for wholesale rate changes. Qwest's process currently exceeds Staff's recommendation by a factor of three.

AT&T's witness identified the problems and inadequacies with Qwest's wholesale billing systems and processes to change wholesale rates. AT&T Ex. 1 at 2-5. However, there is little need to explain the inadequacies at length because Qwest acknowledged the inadequacies of its systems and the need to shorten the implementation cycle for wholesale rate changes.

Generally, the billing at issue is the billing Qwest does for network elements, interconnection and resale provided to competitive local exchange carriers. The FCC has provided guidance on the standards local exchange carriers must meet when providing network elements to CLECs.

> ... , we conclude that the phrase "nondiscriminatory access" in section 251(c)(3) means at least two things: first, the quality of an unbundled network element that an incumbent LEC provides, as well as the access provided to that element, must be equal between all carriers requesting access to that element; second, where technically feasible, the access and unbundled network element provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent LEC provides to itself.[3]

[3] *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, and *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* CC Docket 95-185, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996), ¶ 312 ("First Report and Order").

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> ... , we conclude that incumbent LECs must provide carriers purchasing access to unbundled network elements with the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions of the incumbent LECs operations and support systems. Moreover, the incumbent must provide access to these functions under the same terms and conditions that they provide these services to themselves or their customers.[4]

• • •

> ... *if competing carriers are unable to perform the functions of* pre-ordering, ordering, provisioning, maintenance and repair, and *billing* for network elements and resale services *in substantially the same time and manner that an incumbent can for itself,* competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing. Thus providing nondiscriminatory access to these support systems functions, which would include access to the information such systems contain, is vital to creating opportunities for meaningful competition.[5]

It is apparent that Qwest must provide access to network elements on a nondiscriminatory basis. This includes the function of billing. AT&T believes this requires parity. AT&T Ex. 1 at 1. Since retail changes are made in 30 calendar days, Qwest should be required to make wholesale rate changes in 30 calendar days. This is the time Staff adopted. Staff Ex. 1 at 20. Even assuming for the sake of argument that "in substantially the same time and manner" does not mean strict equality, Qwest's proposal for 90 calendar days is much greater than 30 calendar days and cannot be considered to be "in substantially in the same time and manner."

Qwest implied through cross-examination of AT&T's witness that the standard is whether the CLEC obtains billing sufficiently timely to provide the CLEC a meaningful

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[4] *Id.*, ¶ 316 (footnotes omitted).
[5] *Id.*, ¶ 518 (emphasis added).

opportunity to compete.[6] Even if Qwest is right, however, AT&T maintains that 90 calendar days fails even this standard, based on statements made by the FCC and the evidence in the Show Cause proceeding.

In the *Pennsylvania 271 Order,* the FCC states:

> As an initial matter, we note that, while we agree with Verizon that the appropriate standard to apply to the wholesale billing function is the "meaningful opportunity to compete" standard, we disagree with Verizon's assertion that we should dismiss any problems that competitive LECs experience with their wholesale bills because the wholesale bill does not directly affect a competitive LEC's ability to bill its end-user customers. Rather, we agree with the competitive LECs that the BOC must demonstrate that it can produce a readable, auditable and accurate wholesale bill in order to satisfy its nondiscrimination requirements under checklist item 2.[7]

The FCC explained why inaccurate bills can impede a CLEC's ability to compete.[8]

> Inaccurate or untimely wholesale bills can impede a competitive LEC's ability to compete in many ways. First, a competitive LEC must spend additional monetary a personnel resources reconciling bills and pursuing bill corrections. Second, a competitive LEC must show improper overcharges as current debts on its balance sheet until the charges are resolved, which can jeopardize its ability to attract investment capital. Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition. Fourth, competitive LECs may lose revenue because they generally cannot, as a practical matter, back-bill end users in response to an untimely wholesale bill from an incumbent LEC.[9]

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[6] *See* TR 75-78 and Qwest Ex. 2, ¶ 39.

[7] *In the Matter of Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania,* CC Docket No. 01-138, Memorandum Opinion and Order, FCC 01-269 (rel. Sept. 19, 2001), ¶ 22 ("*Pennsylvania 271 Order*") (footnotes omitted).

[8] Qwest's bills are inaccurate from the effective date of the new rates until the changes are implemented and the new rates are reflected on the CLECs bills from Qwest.

[9] *Id.,* ¶ 23.

All these reasons apply in the instant case.

As stated earlier, Qwest's goal is to *implement* wholesale rate changes in 90 days. CLECs will not see the changes until the next billing cycle. Thus, a CLEC will not see the changes until its first bill *after* implementation, which will exceed 90 days. Ninety days simply is too long a time to provide carriers a meaningful opportunity to compete.

In the *Pennsylvania 271 Order,* the FCC discusses timeliness of Verizon's wholesale bills. The FCC stated that, "Performance data indicate that any delay associated with BOS BDT bills was temporary, associated with on-going improvements to the billing process and not indicative of a larger, systemic problem with delivering timely bills."[10] Although timeliness of accurate bills in not the same as timeliness of rate changes, the FCC's language is relevant because untimely implementation of rate changes means that CLECs are being billed the wrong rates.[11]

Unlike the reference in the *Pennsylvania 271 Order,* Qwest's problem is not temporary. Qwest has implemented fixes that only reduce the implementation time to 90 days. Also, unlike the reference in the *Pennsylvania 271 Order,* Qwest's billing problem is systemic. Qwest's process for implementing CLEC rate changes is systemically longer than for implementing retail rate changes.

Ninety days is simply too long for implementation of wholesale rate changes. This means a CLEC possibly will have to wait 4 billing cycles to see the credits and new rates on its bill. For all the reasons identified by the FCC, this denies the CLECs a

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[10] *Id.,* ¶ 30.

[11] The billing measures or PIDs will also be based on the old rates during the time it takes to implement the new rates. Therefore, the billing measures will not reflect the accuracy of the bills until the new rates are implemented.

meaningful opportunity to compete and wholesale rate changes clearly are not being made in substantially the same time and manner as retail rate changes.

Decision No. 65450 states that the rate change issues "have implications for application for 271 relief as well." Decision No. 65450 ¶ 36. The discussion of the FCC's orders is intended to assist the Commission in understanding the FCC requirements for billing accuracy. However, it should be noted that the question being addressed – the time permitted an incumbent local exchange carrier to make wholesale rate changes – has not been addressed directly in any section 271 order.

In an Joint Stipulation Re: Procedural Schedule dated February 3, 2003, "[t]he parties also agree[d] that to the extent any 271 related issues are raised by this complaint, that they will be handled within the Section 271 Docket itself." It was always AT&T's understanding that Staff would raise the issue in the Section 271 case since Staff raised the issue and indicated it had Section 271 implications. The issue has not been raised in the Section 271 case, and it must be addressed before the Commission finds Qwest has met the Section 271 requirements pertaining to OSS. Alternatively, any order approved on August 21, 2003, must be conditioned on resolving this issue prior to the Commission making its ultimate recommendation on Qwest's Section 271 compliance..

B. Qwest is Not Adhering to the Change Management Process and is Not in Compliance With Checklist Items 2 (UNEs) and 4 (Loops).

During the Section 271 proceeding, the issue of conditioning charges was a contested issue.[12] In Decision No. 64836, the Commission concluded: "FCC rulings permit Qwest to recover the conditioning costs of loops less that 18,000 feet. We defer

[12] The following is taken from AT&T's Reply Brief to Comments on Staff's Report on July 30-31 Supplemental Workshop (Report Two) dated July 24, 2003.

determination on the amount of conditioning charges to the Wholesale Cost Docket." Decision No. 64836, ¶ 67 (May 31, 2002).

In the Wholesale Cost Docket, the Commission adopted Staff's proposed rates of $40 per loop to remove load coils or bridge taps under 18,000 feet, $70 per location for aerial or buried loops over 18,000 feet and $400 per location for underground loops over 18,000 feet. For loops over 18,000 feet, there is an additional charge of $2 to remove each additional load coil or bridge tap at the same time, location and cable. Decision No. 64922, at 36-37 (June 12, 2002). Qwest filed an Exhibit A with the Commission containing these rates on August 30, 2002.

On June 28, 2002, Qwest filed its Thirteenth Revision of its Arizona SGAT. The definition of unbundled loop in the SGAT includes line conditioning as a feature, function and capability of the loop. SGAT, §§ 4.108 & 9.2.1. Conditioning, therefore, is not something that Qwest has to "construct" separate from the loop. The loop is available, and no "construction" is needed to condition the loop.[13] This is confirmed by other SGAT language:

> 9.1.2.1.2 If cable capacity is available, Qwest will complete *incremental facility work* (i.e., *conditioning*, place a drop, add a network interface device, card existing subscriber Loop carrier systems at the Central Office and remote terminal, add Central Office tie pairs, add field cross jumpers) in order to complete facilities to the Customer premises. (Emphasis added.)

The SGAT, at Section 9.2.2.3 on digital capable loops, states: "If conditioning is required on a loop that is less than 18,000 feet in length that has not been conditioned as a

[13] In fact, Qwest agreed to change its definition of unbundled loop to conform to the FCC's definition, which includes line conditioning. *See* Rebuttal Affidavit of Jean M. Liston, Checklist Item 4 Unbundled Loops (February 19, 2001) at 5-6. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket 96-98, Third Report and Order, FCC 99-238 (rel. Nov. 5, 1999), ¶ 167 ("*UNE Remand Order*").

part of Qwest's bulk deloading project, *then CLEC shall be charged for such conditioning as set forth in Exhibit A*, if it authorized Qwest to perform such conditioning." (Emphasis added.) The SGAT further states:

> 9.2.2.4 Non-Loaded Loops. CLEC may request that Qwest provide a non-loaded Unbundled Loop. In the event that no such facilities are available, CLEC may request that Qwest condition existing spare facilities. *CLEC may indicate on the LSR that it pre-approves conditioning if conditioning is necessary*. If CLEC has not pre-approved conditioning, Qwest will obtain CLEC's consent prior to undertaking any conditioning efforts. Upon CLEC pre-approval or approval of conditioning, and only if conditioning is necessary, Qwest will dispatch a technician to condition the Loop by removing load coils and excess Bridged Taps to provide CLEC with a non-loaded Loop. *CLEC will be charged the nonrecurring conditioning charge* (i.e., cable unloading and Bridged Taps removal), *if applicable, in addition to the Unbundled Loop installation nonrecurring charge*. (Emphasis added.)
>
> 9.2.2.4.1 *Where Qwest fails to meet a Due Date for performing Loop conditioning*, CLEC shall be entitled to a credit equal to the amount of any conditioning charges applied, where it does not secure the Unbundled Loop involved within one (1) month of such Due Date. *Where Qwest does not perform conditioning in accord with the standard applicable under this SGAT*, CLEC shall be entitled to a credit of one-half (1/2) of the conditioning charges made, unless CLEC can demonstrate that the Loop as conditioned is incapable of substantially performing the functions normally within the parameters applicable to such Loop as this SGAT requires Qwest to deliver it to CLEC. In this case of fundamental failure, CLEC shall be entitled to a credit of all conditioning charges, except where CLEC asks Qwest to cure any defect and Qwest does so. In the case of such a cure, CLEC shall be entitled to the one-half (1/2) credit identified above. (Emphasis added.)

Based on the terms of the SGAT, it is clear that if a cable is available, Qwest must condition the cable to complete the work as part of the order for the unbundled loop. It is also clear that if a spare facility is available that needs conditioning, CLECs can order the facility and pre-approve conditioning on the LSR. § 9.2.2.4. If Qwest fails to meet Due

Date for performing Loop conditioning, credits may be applicable. The standard interval for 1 – 8 unbundled conditioned loops is 15 business days. For 9 or more conditioned loops the standard interval is ICB. SGAT, Ex. C; TR 81, Workshop 5, Vol. I (March 5, 2001).

Section 19.1 makes it clear that construction charges do not apply where Qwest is required to modify existing facilities necessary to accommodate interconnection or access network elements *as specifically provided for in other parts of the SGAT.* This language is consistent with the definition of an unbundled loop. Since line conditioning is included as a feature, function and capability of the loop, by the terms of Section 19, construction charges cannot apply. Qwest's changes would require that every loop requiring line conditioning go through the construction process. This is a significant change to the process.

In an announcement to CLECs dated April 30, 2003, Qwest simply deleted conditioning from the definition of incremental facility work from its Competitive Local Exchange Carrier (CLEC) Requested Unbundled Network Elements (UNE) Construction (CRUNEC) _ V3.0 document. Document No. PROS.04.30.03.F.01071. CRUNEC_V4.0. No additional charges or processes were imposed on conditioning of unbundled loops in this release. The significance of the change in V4.0 was not readily apparent because no charges or additional language was added.

Qwest subsequently altered the current process and added new charges for obtaining conditioned loops by requiring CLECs to submit a Quote Preparation Fee for Simple Fee Rearrangements (QPFS) for the removal of bridge taps and load coils. Document No. PROD.07.11.03.F.03468. UNECRUNEC_V5.0. In addition to a QPFS

contract, the CLEC must submit full payment of the new fee. This simply starts the process to receive a CRUNEC quote. After accepting the CRUNEC quote, the CLEC must resubmit the LSR.[14] Only after the entire CRUNEC process is followed will the line conditioning be done.

The process conflicts with the existing SGAT in a number of respects. First, the SGAT includes conditioning within the definition of unbundled loop and the scope of incremental facility work. Second, Exhibit A of the SGAT has Commission-approved rates for conditioning that covers Qwest's cost, and it does not include or authorize a QPFS or construction charges for conditioning. Third, the SGAT has a 15 business day standard interval for loops requiring conditioning. Fourth, the SGAT permits a CLEC to submit an LSR and pre-approve conditioning on the LSR. Fifth, the SGAT limits construction charges to the building of facilities not covered by other terms of the SGAT. It is obvious that Qwest is attempting to change substantive provisions of the SGAT, add additional charges, obtain approval of the charges through the CMP process, and impose the changes on CLECs unilaterally.

The announcement does not conform to the CMP Document. The announcement was issued as a Level 3 change. A Level 3 change is one that has a moderate effect on CLEC operating procedures. CMP Document, § 5.4.4. However, the change significantly and severely impacts CLEC operations. Not only is the proposed process more intensive, the additional time imposed by the process will make it very difficult for the CLECs to compete with Qwest.

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[14] It now becomes very clear why Qwest earlier deleted conditioning from the definition of incremental facility work. Under the description of CRUNEC, it is made clear that CRUNEC is not required for incremental facility work. In V5.0, Qwest adds additional language in the pricing section under "rate structure" that explicitly states the QPFS will apply to conditioning.

The change is more appropriately classified as a Level 4 change. Section 5.4.5 of the CMP Document states that a Level 4 change is one that, for example, increases an interval in the Qwest standard interval guide, adds a new manual process, or limits the availability or functionality of an existing product or existing feature. It is obvious Qwest seeks to increase the standard interval of 15 business days, seeks to add a manual process for conditioning which can currently be requested on the LSR and attempts to change the functionality of unbundled loops by deleting conditioning from the definition of an unbundled loop. There is no question the change in the announcement qualifies as a Level 4 change.

Staff should be extremely concerned that Qwest is not following the CMP. In Staff's Report on Qwest's CMP, Staff concluded that Qwest met the FCC's requirements for a change management process, with one exception – " it is simply not possible to verify that Qwest has established pattern of compliance and has adhered to this pattern of compliance over time."[15]

Qwest is attempting to add new rates through the CMP. In fact, Qwest imposed the rates before the CMP was concluded. Furthermore, apart from the fact the imposition of new non-cost-based rates violates Section 252, it was agreed during re-design meetings that CMP would not be used to add new rates or alter existing rates. More problematic for the CLECs, they may have to pay the rates until the rates can be rejected by the Commission. It is AT&T's position the existing rates cover all of Qwest's costs.

It is obvious from Eschelon's comments that Qwest has imposed the new process unilaterally on CLECs, although the CMP Document states that if there is a "conflict

[15] Staff's Supplemental Report on Qwest's Compliance with Checklist Item: No. 2 – Access to Unbundled Network Elements (UNEs) Change Management Process and Stand-Alone Test Environment, ¶ 82 (May 7, 2002).

between the changes implemented through the CMP and any CLEC interconnection agreement (whether based on the Qwest SGAT or not), the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such interconnection agreement." CMP Document, § 1.0. Qwest, therefore, has violated the CMP in this respect as well.[16]

Since Qwest can adopt the new processes through the CMP over CLEC objections, it is imperative that Qwest not be allowed to enforce the new provisions without amendments to existing interconnection agreements and the SGAT on file with the Commission. The new processes may not, quite frankly, be in the public interest because of the harmful effects to the CLECs. The Commission is the last line of defense against Qwest's insistence on implementing these types of changes.

It appears that Qwest's motive is to make the availability of loops to CLECs more difficult in order to force the CLECs to order more expensive private line facilities.[17] Eschelon stated that Qwest gave Eschelon 3 options: cancel the loop order, order a private line[18] or use the CRUNEC process. Eschelon Comments at 9. Canceling the order obviously favors Qwest because it retains the customer. Having to purchase a private line favors Qwest because it receives higher rates by denying the CLEC access to UNEs at cost-based rates. Finally, the CRUNEC process forces unreasonable delay on the CLECs that may ultimately lead to *customers* canceling their orders. In all cases it is a win-win situation for Qwest.

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[16] This provision is very important because even if Qwest complies with the CMP Document and follows Level 4 change procedures, it may still adopt the new processes over CLEC objections.

[17] Qwest refused to provide high-capacity loops until the *UNE Remand Order* came out. In the *UNE Remand Order* the FCC upheld and expanded its earlier definition of unbundled loop and rejected Qwest's position that high-capacity loops not be included in the definition of unbundled loops. *UNE Remand Order,* ¶¶ 176-177.

[18] When Eschelon and other CLECs did order private lines, the private lines were made available without going through the CRUNEC or construction process. This is discrimination and is prohibited by the Act.

After going through the Section 271 workshop process and OSS testing, the SGAT review, CMP redesign, the Section 252(e) proceeding and the Show Cause proceeding, AT&T cannot understand why Qwest would unilaterally impose changes it has proposed through the CMP process without obtaining amendments to the CLECs' contracts as required by the CMP. It can only conclude that there are still employees within Qwest that seek to inhibit competition, raise CLECs' costs after rates have been established by the Commission and generally frustrate the CLECs' ability to do business. The important thing now is to require Qwest to follow the CMP and prohibit Qwest from imposing any processes adopted through CMP on CLECs without going through the contract amendment process. In addition, Staff should advise Qwest that Qwest cannot unilaterally change the terms of the SGAT on file with the Commission. Staff must also review Qwest's compliance with the CMP generally and Section 271.

Qwest is not following the CMP. First, it implemented the process without the CLECs and Qwest mutually agreeing to amend the existing interconnection agreements. Second, it changed essential terms of the SGAT without the Commission approval. Third, it imposed the new fee unilaterally without completing the CMP and without contract amendments to permit it to charge the CLECs. Fourth, the Commission adopted new line conditioning recurring and nonrecurring charges that cover all of Qwest's cost of line conditioning.

Finally, by dropping line conditioning from the definition of unbundled loop, Qwest in no longer in compliance with checklist items 2 and 4.

This issue raises serious questions regarding Qwest's compliance with the CMP process. The issue is not addressed by Staff's draft Order. AT&T believes that the

Commission cannot find Qwest's CMP adhered to over time since the facts demonstrate Qwest has ignored the CMP and CMP documentation to the detriment of the CLECs.

III. CONCLUSION

AT&T respectfully requests that the Commission postpone voting on whether Qwest's OSS are in compliance with Section 271 and the FCC's orders. If the Commission proceeds with a vote, AT&T requests that the order be subject to conditions requiring the resolution of these two matters prior to the Commission providing its ultimate recommendation on Qwest's compliance with Section 271 of the Act.

Respectfully submitted this 19th day of August, 2003.

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.

By: /s/ Richard S. Wolters

Mary B. Tribby
Richard S. Wolters
1875 Lawrence Street, Suite 1503
Denver, Colorado 80202
Telephone: (303) 298-6741

CERTIFICATE OF SERVICE
(Docket No. T-00000A-97-0238)

I certify that the original and 13 copies of AT&T's Comments on Staff's Draft Order on Qwest's OSS were sent by overnight delivery on August 19, 2003 to:

Arizona Corporation Commission
Docket Control – Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

and a true and correct copy was sent by overnight delivery on August 19, 2003 to:

Maureen Scott
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Mark A. DiNunzio
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Ernest Johnson
Director - Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Christopher Kempley
Arizona Corporation Commission
Legal Division
1200 West Washington Street
Phoenix, AZ 85007

Jane Rodda
Administrative Law Judge
Arizona Corporation Commission
400 West Congress
Tucson, AZ 85701-1347

and a true and correct copy was sent by U. S. Mail on August 19, 2003 to:

Thomas F. Dixon
WorldCom, Inc.
707 – 17th Street, #3900
Denver, CO 80202

Diane Bacon, Legislative Director
Communications Workers of America
Arizona State Council
District 7 AFL-CIO, CLC
5818 N. 7th Street, Suite 206
Phoenix, AZ 85014-5811

K. Megan Doberneck
Covad Communications Company
7901 Lowry Blvd.
Denver, CO 80230

Bradley Carroll
Cox Arizona Telcom, L.L.C.
20401 North 29th Avenue
Phoenix, AZ 85027-3148

Michael M. Grant
Gallagher and Kennedy
2575 East Camelback Road
Phoenix, AZ 85016-9225

Traci Kirkpatrick
Davis Wright Tremaine LLP
1300 S.W. Fifth Avenue
Portland, OR 97201

Michael W. Patten
Roshka Heyman & DeWulf, PLC
400 North Fifth Street, Suite 1000
Phoenix, AZ 85004-3906

Joyce Hundley
United States Dept. of Justice
Antitrust Division
1401 H Street NW, Suite 8000
Washington, DC 20530

Daniel Pozefsky
Residential Utility Consumer Office
1110 W. Washington, Suite 220
Phoenix, Arizona 85007

Mark N. Rogers
Excell Agent Services, L.L.C.
P.O. Box 52092
Phoenix, AZ 85072-2092

Mark P. Trinchero
Davis Wright Tremaine
1300 SW Fifth Ave., Suite 2300
Portland OR 97201-5682

Brian Thomas
Vice President – West
Time Warner Telecom, Inc.
223 Taylor Avenue North
Seattle, WA 98109

Penny Bewick
New Edge Networks
3000 Columbia House Blvd., Suite 106
Vancouver, WA 98661

Michael Morris
Allegiance Telecom of Arizona, Inc.
505 Sansome Street, 20th Floor
San Francisco, CA 94111

Karen L. Clauson
Eschelon Telecom, Inc.
730 2nd Avenue South, Suite 1200
Minneapolis, MN 55402

Joan S. Burke
Osborn Maledon, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, AZ 85012

Eric S. Heath
Sprint Communications Company L.P.
100 Spear Street, Suite 930
San Francisco, CA 94105

Kevin Chapman
Director-Regulatory Relations
SBC Telecom, Inc.
1010 N. St. Mary's, Rm. 13K
San Antonio, Texas 78215-2109
Jeffrey W. Crockett
Snell & Wilmer, LLP
One Arizona Center
Phoenix, AZ 85004-0001

Todd C. Wiley
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, AZ 85016-9225

Michael B. Hazzard
Kelley, Drye & Warren, LLP
1200 19th Street, NW, Fifth Floor
Washington, DC 20036

Daniel Waggoner
Davis Wright Tremaine
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

Timothy Berg
Fennemore Craig, P.C.
3003 North Central Ave., #2600
Phoenix, AZ 85012

Raymond S. Heyman
Randall H. Warner
Roshka Heyman & DeWulf
Two Arizona Center
400 N. Fifth Street, Suite 1000
Phoenix, AZ 85004

Harry Pliskin
Senior Counsel
Covad Communications Company
7901 Lowry Boulevard
Denver, CO 80230

Andrew Crain
Qwest Corporation
1801 California Street, Suite 4900
Denver, CO 80202

Janet Livengood
Regional Vice President
Z-Tel Communications, Inc.
601 S. Harbour Island Blvd., Suite 220
Tampa, FL 33602

Charles W. Steese
Qwest Corporation
1801 California Street, Suite 4900
Denver, CO 80202

Bill Haas
Richard Lipman
McLeodUSA Telecommunications
Services, Inc.
6400 C Street SW
Cedar Rapids, IA 54206-3177